



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION

1919 M STREET N.W. WASHINGTON, D.C. 20554

News media information 202/418-0500 Recorded listing of releases and texts 202/418-2222.

DA 97-1072

May 21, 1997

**COMMENTS REQUESTED ON APPLICATION BY AMERITECH MICHIGAN
FOR AUTHORIZATION UNDER SECTION 271 OF THE COMMUNICATIONS ACT
TO PROVIDE IN-REGION, INTERLATA SERVICE IN THE STATE OF MICHIGAN
(CC DOCKET NO. 97-137)**

On May 21, 1997, Ameritech Michigan filed an application for authorization to provide in-region interLATA service in the State of Michigan, pursuant to section 271 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 271. This Public Notice establishes certain procedural requirements relating to the Commission's processing of that application. The Commission in a prior Public Notice adopted other procedural requirements that apply to the processing of this and all other applications for authorization under section 271 of the Act.¹ A copy of that earlier Public Notice is attached hereto. Also attached is a protective order adopted today, Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Michigan, Protective Order, DA 97-1073 (Common Carrier Bur. rel. May 21, 1997), that establishes the conditions under which access to confidential documents submitted in this proceeding by Ameritech Michigan or any other party will be made available.

Comments By Interested Third Parties. Comments in support of or opposition to the Ameritech Michigan application by interested third parties must be filed on or before **June 10, 1997**.

State Commission and Department of Justice Written Consultations. The Michigan Public Service Commission (Michigan Commission) must file any written consultation on or before **June 10, 1997**. Any written consultation by the Department of Justice (which, by the Act's express terms, must become part of the record) must be filed on or before **June 25, 1997**.

Replies. All participants in the proceeding -- the applicant, interested third parties, the

¹ See *Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act*, Public Notice, FCC 96-469 (rel. Dec. 6, 1996) (OMB Control No. 3060-0756).

Washington, D.C. 20554. Applications will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. The applicant must also submit a copy of the application simultaneously to (i) the Department of Justice c/o Donald J. Russell, Telecommunications Task Force, Antitrust Division, Room 8205, 555 Fourth Street, NW, Washington, D.C. 20001, (ii) the relevant State regulatory commission, and (iii) the Commission's copy contractor, ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C., 20037, tel. (202) 857-3800.

B. Preliminary Matters

Section 271(d)(3) states that "[t]he Commission shall not approve the authorization requested in an application . . . unless it finds" three specified conditions to be met. We expect that a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its findings thereon. In the event that the applicant submits (in replies or ex parte filings) factual evidence that changes its application in a material respect, the Commission reserves the right to deem such submission a new application and start the 90-day review process anew. All factual assertions made by any applicant (or any commenter) must be supported by credible evidence or will not be entitled to any weight.

Because the statute affords us only 90 days to review the application, we encourage the applicant to meet with likely objectors in order to attempt to narrow the issues in dispute. As noted in Section C of this Public Notice, we require that either the application itself or a supplemental statement filed within five days after the application contain a signed statement that describes efforts that the applicant has made to narrow the issues in dispute and the results of those efforts.

C. Content of Applications

Applications shall conform to the Commission's general rules relating to applications.² As noted above, applications shall have two parts: (1) a Brief in Support of Application by [Bell company name] for Provision of In-Region, InterLATA Services in [State name] and (2) any supporting documentation, such as records of State proceedings, interconnection agreements, affidavits, etc. The Brief in Support may not exceed 100 pages. There is no page limit, however, on supporting documentation.

The Brief in Support should contain the following items:

- (a) a table of contents;
- (b) a concise summary of the substantive arguments presented in the Brief;³
- (c) a statement identifying all of the agreements that the applicant has entered into pursuant to negotiations and/or arbitrations under section 252, including the dates on which the agreements were approved under section 252 and the status of any

² See 47 C.F.R. §§ 1.49, 1.741-1.749.

³ See *id.* at § 1.49.

- federal court challenges to the agreements pursuant to section 252(e)(6);
- (d) a statement identifying how the applicant meets the requirements of section 271(c)(1), including a list of the specific agreements on which the applicant bases its application if it intends to rely on a subset of the list set forth in item (c) above;
 - (e) a statement summarizing the status and findings of the relevant State proceedings (if any) examining the applicant's compliance with section 271 or portions thereof;
 - (f) a statement describing the efforts the applicant has made to meet with likely objectors to narrow the issues in dispute and the results of those efforts (as indicated above, this statement may be filed separately from the application; but not later than five days after the filing of the application);
 - (g) all legal and factual arguments that the three requirements of section 271(d)(3) have been met, supported as necessary with selected excerpts from the supporting documentation (with appropriate citations);⁴
 - (h) an Anti-Drug Abuse Act certification as required by 47 C.F.R. § 1.2002; and
 - (i) an affidavit signed by an officer or duly authorized employee certifying that all information supplied in the application is true and accurate.⁵

The name of the applicant, the date the application is filed, and the State to which it relates should appear in the upper right-hand corner of each page of the Brief in Support.

As for the supporting documentation, we require that it contain, at a minimum, the complete public record, as it exists on the date of filing, of the relevant State proceedings (if any) examining the applicant's compliance with section 271 or portions thereof. In addition, supporting documentation, including any records of interconnection agreements, affidavits, etc., shall be provided in appendices, separated by tabs and divided into volumes as appropriate.

D. Comments By Interested Third Parties

After an application has been filed, the Common Carrier Bureau will issue a public notice (Initial Public Notice) establishing the specific due dates for the various filings set forth below. Simultaneously with the issuance of the Initial Public Notice, the Bureau will notify the Department of Justice and the affected State of our receipt of the application. Interested third parties will have approximately 20 days from the issuance of the Initial Public Notice to file comments in opposition or support, which may not exceed 50 pages. The specific due date for comments will be set forth in the Initial Public Notice. The name of the commenter, the name of the applicant, and the State to which the application relates should appear in the upper right-hand corner of each page. Supporting documentation is welcome without page limits. To file comments (or any other filing set forth below) in a section 271 proceeding, commenters need to follow the applicable procedures outlined in section A of this Public Notice.

⁴ Item (g) is obviously the core item of the Brief in Support, and may be quite lengthy. It may help to divide it, therefore, into three subsections, one corresponding to each of the three requirements set forth in section 271(d)(3).

⁵ See 47 C.F.R. § 1.743.

E. State Commission and Department of Justice Written Consultations

Many State commissions have already commenced proceedings to examine Bell company compliance with section 271 or portions thereof. In light of this fact and in light of the shortness of the 90-day period for deciding a section 271 application, we require that the relevant State commission file any written consultation not later than approximately 20 days after the issuance of the Initial Public Notice. The specific due date for the State's written consultation will be set forth in the Initial Public Notice. The relevant State commission shall also follow the applicable procedures outlined in section A of this Public Notice.

Any written consultation by the Department of Justice (which, by the Act's express terms, must become part of the record) must be filed not later than approximately 35 days after the issuance of the Initial Public Notice. The specific due date for the Department's written consultation will be set forth in the Initial Public Notice. The Department of Justice shall also follow the applicable procedures outlined in section A of this Public Notice.

The State commission and the Department of Justice are also welcome to file a reply pursuant to section F of this Public Notice, as well as written *ex parte* submissions in accordance with section G of this Public Notice.

F. Replies

All participants in the proceeding -- the applicant, interested third parties, the relevant State commission, and the Department of Justice -- may file a reply to any comment made by any other participant. Such replies are limited to 35 pages and will be due approximately 45 days after the Initial Public Notice is issued. The specific due date for replies will be set forth in the Initial Public Notice. Reply comments may not raise new arguments that are not directly responsive to arguments other participants have raised, nor may the replies be repetitive of arguments made by that party in the application or initial comments. The name of the submitter, the name of the applicant (if different), and the State to which the application relates should appear in the upper right-hand corner of each page. Supporting documentation is welcome without page limits.

G. Ex Parte Rules - Non-Restricted Proceeding

Because of the broad policy issues involved, section 271 application proceedings initially will be considered non-restricted proceedings.⁶ Accordingly, *ex parte* presentations will be permitted, provided they are disclosed in conformance with Commission *ex parte* rules.⁷ Because of the statutory timeframe, however, we strongly encourage parties to set forth their views comprehensively in the formal filings specified above (e.g., the Brief in Support, oppositions, supporting comments, etc.) and not to rely on subsequent *ex parte* presentations. In any event, parties may not file more than a total of 20 pages of written *ex parte* submissions. This 20-page

⁶ See *id.* at §§ 1.1200(a), 1.1206.

⁷ See *id.* at §§ 1.1202, 1.1206(a).

limit does not include: (1) written *ex parte* submissions made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; (3) written material filed in response to direct requests from Commission staff; or (4) written factual exhibits. *Ex parte* submissions in excess of the 20-page limit will not be considered part of the record.

For purposes of these proceedings, and in light of the explicit role the Act gives to the Department of Justice and the State commissions under section 271, any oral *ex parte* presentations from the Department of Justice and the relevant State commission will be deemed to be exempt *ex parte* presentations. To the extent that we obtain through such oral *ex parte* presentations new factual information on which we may rely in our decision-making process, the party submitting the information (the Department of Justice or the relevant State commission) shall prepare a summary for inclusion in the record in accordance with Commission rules,⁸ unless such a summary is being prepared by Commission staff. We also waive any page limits for written *ex parte* submissions by the Department of Justice or the relevant State commission.

Notwithstanding the above, the Commission may, by subsequent public notice, prohibit all communication with Commission personnel regarding the application during a seven-day period preceding the anticipated release date of the Commission's order regarding the application.⁹

This Public Notice contains new information collections subject to the Paperwork Reduction Act of 1995. Accordingly, we are presently requesting emergency approval from the Office of Management and Budget for these collections. When the Commission receives such approval, it will issue a Public Notice to that effect, after which the procedural requirements and policies contained herein will become effective.¹⁰

By the Commission.

News Media contact: Mindy J. Ginsburg (202) 418-1500.

FCC Common Carrier Bureau contact: David Ellen (202) 418-1580.

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⁸ See *id.* at § 1.1206(a).

⁹ Cf. §§ 1.1200(a)-(b); 1.1203.

¹⁰ On this last point, we note that the notice and comment and effective date provisions of the Administrative Procedure Act are not applicable to these procedural requirements and policies. See 5 U.S.C. § 553(b), (d).

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PUBLIC NOTICE

CC 97-137

FEDERAL COMMUNICATIONS COMMISSION**1919 M STREET N.W. WASHINGTON, D.C. 20554**

News media information 202/418-0500 Recorded listing of releases and texts 202/418-2222.

FCC 96-469
December 6, 1996

PROCEDURES FOR BELL OPERATING COMPANY APPLICATIONS UNDER NEW SECTION 271 OF THE COMMUNICATIONS ACT

This Public Notice establishes various procedural requirements and policies relating to the Commission's processing of Bell operating company applications to provide in-region, interLATA services pursuant to new section 271 of the Communications Act of 1934, as amended, 47 U.S.C. § 271 (Act).¹ Section 271 provides for applications on a State-by-State basis.

A. Application Filing Requirements

Applicants must file an original and six copies of each section 271 application. By "application," we mean (1) a stand-alone document entitled Brief in Support of Application by [Bell company name] for Provision of In-Region, InterLATA Services in [State name] and (2) any supporting documentation. The content of both parts of the application is addressed later in this Public Notice.

The Applicant's Brief in Support shall also be submitted on a 3.5 inch computer diskette formatted in WordPerfect 5.1. If electronically available, the supporting documentation must be included on the computer diskette as well. With respect to supporting materials that are not provided on diskette, the applicant should include a note at the end of the electronic version of the Brief in Support indicating that such materials are on file with the Commission. All filings submitted on diskette will be posted on the internet for public inspection at <http://www.fcc.gov>. We also urge the applicant to post its electronic filings on its own internet home page and to inform us of such posting in the Brief in Support.

If the applicant wants each Commissioner to receive a copy of the section 271 application, the applicant should file an original plus eleven copies. The original, all copies, and the diskette should be sent to the Office of the Secretary, Federal Communications Commission.

¹ See also Comment Sought on Standard Protective Order to be Used in Connection With Section 271 Applications, DA 96-1751 (rel. Oct. 23, 1996).

Michigan Commission, and the Department of Justice -- may file a reply to any comments filed by any other participant on or before **July 7, 1997**.

Treatment of Confidential Information. Submissions by parties (including Ameritech Michigan, the Department of Justice, and the Michigan Commission) that contain no confidential information or that do not comment on any confidential information submitted by other participants in the proceeding shall be filed in conformance with the procedures set forth in the attached Public Notice.² To the extent a submission includes confidential information or comments on confidential information that another participant has submitted, the party filing that submission shall, consistent with the attached Public Notice, file an original and five copies of a public (*i.e.*, redacted) version of its submission with the Secretary. Also, consistent with the attached Public Notice, each redacted filing must be submitted on a 3.5 inch computer diskette formatted in WordPerfect 5.1. In addition, consistent with the attached Public Notice, the party shall file an original and five copies of a confidential (*i.e.*, unredacted) version of its submission. All questions relating to access to confidential information submitted by Ameritech Michigan shall be directed to Toni Acton, Ameritech, 1401 H Street, N.W., Suite 1020, Washington, D.C. 20005, Phone: (202) 326-3807.

Ex Parte Rules - Non-Restricted Proceeding. This proceeding is a non-restricted proceeding.³ Accordingly, *ex parte* presentations are permitted, provided they are disclosed in conformance with Commission *ex parte* rules.⁴ Because of the statutory time frame, however, the Commission strongly encourages parties to set forth their views comprehensively in the formal filings specified above (e.g., written consultations, oppositions, supporting comments, etc.) and not to rely on subsequent *ex parte* presentations. In any event, parties may not file more than a total of 20 pages of written *ex parte* submissions. This 20-page limit does not include: (1) written *ex parte* submissions made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; (3) written material filed in response to direct requests from Commission staff; or (4) written factual exhibits. *Ex parte* submissions in excess of the 20-page limit will not be considered part of the record.

For purposes of this proceeding, any oral *ex parte* presentations from the Department of Justice and the Michigan Commission will be deemed to be exempt *ex parte* presentations. To the extent that the Commission obtains through such oral *ex parte* presentations new factual information on which the Commission may rely in its decision-making process, the party submitting the information (the Department of Justice or the Michigan Commission)

² See *Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act*, *supra*.

³ See 47 C.F.R. §§ 1.1200(a), 1.1206.

⁴ See *id.* at §§ 1.1202, 1.1206(a).

shall prepare a summary for inclusion in the record in accordance with Commission rules,⁵ unless such a summary is being prepared by Commission staff. We also waive any page limits for written *ex parte* submissions by the Department of Justice or the Michigan Commission.

Notwithstanding the above, the Commission may, by subsequent public notice, prohibit all presentations to its decision-making personnel regarding the application during a seven-day period preceding the anticipated release date of the Commission's order regarding the application.⁶

By the Chief, Common Carrier Bureau

News Media contact: Rochelle Cohen (202) 418-1500.

FCC Common Carrier Bureau contacts: Melissa Waksman and Brent Olson (202) 418-1580.

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⁵ See *id.* at § 1.1206(a).

⁶ Cf. §§ 1.1200(a)-(b); 1.1203.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Application of Ameritech Michigan)
Pursuant to Section 271 of the) CC Docket No. 97-137
Communications Act of 1934,)
as amended, to Provide In-Region,)
InterLATA Services)
in Michigan)

PROTECTIVE ORDER

Adopted: May 21, 1997

Released: May 21, 1997

By the Chief, Common Carrier Bureau:

1. Documents submitted to the Commission in the course of section 271 proceedings may represent or contain confidential or proprietary information. To ensure that documents and materials in the above-referenced proceeding considered by the applicants or other submitters to be confidential and proprietary are afforded protection, the Common Carrier Bureau hereby enters this Protective Order:

2. Non-Disclosure. Except with the prior written consent of the person originally designating a document to be stamped as a confidential document, or as hereinafter provided under this order, no stamped confidential document may be disclosed to any person.

(a) Stamped Confidential Documents. A "stamped confidential document" means any document which bears the legend (or which shall otherwise have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER" to signify that it contains information believed to be subject to protection under the Commission's rules. For purposes of this order, the term "document" means all written, recorded, or graphic material, whether produced or created by a party or another person, whether produced pursuant to the Commission's rules, subpoena, by agreement, or

otherwise. Documents that quote, summarize, or contain materials entitled to protection may be accorded status as a stamped confidential document, but, to the extent feasible, shall be prepared in such a manner that the confidential information is bound separately from that not entitled to protection.

(b) Documents Submitted by the Department of Justice. Consistent with the District Court Opinion and Order filed April 11, 1996 in United States v. Western Elec. Co., No. 82-0192 (D.D.C.), a document submitted by the Department of Justice that bears any confidential marking from proceedings in that case or was to be treated as confidential by agreement between the original submitting party and the Department of Justice shall be stamped as confidential upon its submission in the course of this section 271 proceeding. Regardless of whether the Department of Justice stamps such a document as confidential, however, any document that bears any confidential marking from proceedings in United States v. Western Elec. Co. will be deemed a "stamped confidential document" for purposes of this order. For the purposes of any document submitted by the Department of Justice in this section 271 proceeding, all references herein to the person or counsel that originally designated the document as confidential shall be deemed references to the entity, or its counsel, that originally submitted the document to the Department of Justice (if any), in addition to the Department of Justice.

3. Permissible Disclosure. Notwithstanding paragraph 2, stamped confidential documents may be disclosed subject to the provisions of subparagraphs (a) and (b), to the following persons if disclosure is reasonably necessary for such persons to render professional services in this proceeding: counsel of record for parties that may file in this proceeding, including in-house counsel who are actively engaged in the conduct of this proceeding; partners, associates, secretaries, paralegal assistants, and employees of such counsel; outside consultants or experts retained to render professional services in this proceeding, provided that they are under the supervision of the counsel of record; and in-house economists and regulatory analysts, provided that they are under the supervision of the counsel of record. Such documents may also be disclosed to relevant employees of regulatory agencies, Commission employees involved in this proceeding, and to any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

(a) Notwithstanding any other provision of this order, before any disclosure shall occur, any individual (other than a Commission employee) to whom confidential information is disclosed must certify in writing that he/she has read and understands this PROTECTIVE ORDER, agrees to abide by its terms, and understands that unauthorized disclosures of the stamped confidential documents are prohibited. A copy of each such certification shall be provided to the party that designated the information confidential. (See Attachment A for a model certification.)

(b) Before disclosing a stamped confidential document to any person who is listed

in paragraph 3 (other than an attorney) and who is employed by a competitor or potential competitor of the party that so designated the document, the party seeking such disclosure shall give at least five days' advance notice in writing to the counsel who designated such information as confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. No such disclosure shall be made within the five-day period. If, within the five-day period, a motion is filed objecting to the proposed disclosure, disclosure is not permissible until the Commission has denied such motion and disclosure is permitted under 47 C.F.R. § 0.459. Any such motion shall be hand-served on the party seeking such disclosure.

4. Access to Confidential Information. Any party producing confidential information pursuant to this order shall designate a Washington, D.C. location and such other locations as may be convenient at which all parties shall be permitted access to and review of requested confidential information pursuant to the other terms of this order, or pursuant to alternative arrangements agreed upon by the parties. Any such access or review may be limited to regular business hours after reasonable notice by the requesting party.

5. Confidential Information Filed in the Record. Stamped confidential documents and other confidential information may be offered in the record of this proceeding, provided that such confidential information is furnished under seal. The party submitting confidential documents shall ensure that each page bears the legend "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER."

6. Commission Treatment of Confidential Information. If confidential documents are submitted to the Commission in accordance with paragraph 5, the materials shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents. The Commission may, sua sponte or by petition, determine that all or part of the information claimed by the producing party to be confidential is not entitled to such treatment. See generally 47 C.F.R. § 0.459.

7. Use. Persons obtaining access to stamped confidential documents under this order shall use the information only in the conduct of this proceeding and any judicial proceeding arising therefrom, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings. Persons obtaining access to confidential information under the terms of this order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed in which all confidential information is redacted. Persons filing pleadings under seal based on confidential information provided by others shall serve such pleadings by hand or over-night delivery on the party originally requesting confidential treatment of the underlying information.

8. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of stamped confidential documents which a party has obtained under terms of this order, such party shall promptly notify the party and any other person who designated the document as confidential of the pendency of such subpoena or order.

9. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients regarding the section 271 proceeding in which a confidential document is submitted and, in the course thereof, relying generally on examination of stamped confidential documents submitted in that proceeding; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraph 3 above.

10. Prohibited Copying. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited." Application for relief from this restriction against copying may be made to the Commission, with notice to counsel so designating the document.

11. Non-Termination. The provisions of this order shall not terminate at the conclusion of this proceeding.

12. Modification Permitted. Nothing in this order shall prevent any party or other person from seeking modification of this order.

13. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of stamped confidential documents. Parties shall not duplicate any stamped confidential document except working copies and for filing at the Commission under seal.

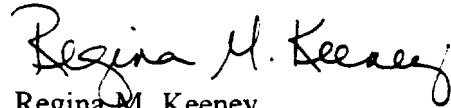
14. Return of Confidential Documents. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), parties that have received stamped confidential documents shall either return all copies of such documents in their possession to the party that submitted the documents, or destroy all such confidential documents.

15. Penalties. In addition to any other penalties or remedies authorized under the Communications Act, the Commission's rules, the common law or other source of law, any failure to abide by the terms of this order may result in dismissal of a party's pleadings, or censure, suspension, or disbarment of the attorneys involved, see 47 C.F.R. § 1.24, or possible referral to the relevant local bar.

16. Accordingly, IT IS ORDERED that pursuant to Sections 4(i), 4(j) and 271 of the

Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 271, the Protective Order IS ADOPTED, effective upon its release.

FEDERAL COMMUNICATIONS COMMISSION


Regina M. Keeney
Chief, Common Carrier Bureau

ATTACHMENT A

CC DOCKET NO. 97-137

I have received a copy of the Protective Order in CC Docket No. 97-137. I have read the order and agree to comply with and be bound by the terms and conditions of this Protective Order. The signatory understands, in particular, that unauthorized disclosure, or the use of the information for competitive commercial or business purposes, will constitute a violation of this Protective Order.

SIGNATURE: _____

NAME PRINTED: _____

TITLE: _____

ADDRESS: _____

REPRESENTING: _____

EMPLOYER: _____

DATE: _____